THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.13767 of 1995

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Dated 16-03-2006

Between:

G.Ramesh Babu.

..... PETITIONER

AND

The Labour Court, rep. by its Presiding Officer, Guntur & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.13767 of 1995

O R D E R:

This writ petition is filed to quash the award of the Labour Court in I.D.No.177 of 1989, dated 21-12-1994, to the extent that the Labour Court while directing that the petitioner be reinstated into service had deprived him of his backwages and had imposed the punishment of stoppage of four annual increments with cumulative effect.

Facts, in brief, are that the petitioner, driver in A.P.S.R.T.C., Kavali Depot was charge sheeted for the accident which occurred on 01-02-1985. The charges alleged against the petitioner read as under:

1. For having driven the vehicle AAZ/5769 negligently at high speed than required at the juncture of the accident on the route Vijayawada to Kavali on 01-02-1985 and caused fatal accident near Pellur village by dashing against the Car No.ADB 2489 coming in the opposite direction which constitutes misconduct in terms of Regulation No.28 of Sub-Clause ix (a) (b) and XXIX of APSRTC Employees (Conduct) Reg. 1963.

2. For having overtaken a lorry going ahead of you with lack of anticipation due to which the bus met with fatal accident by dashing the motor Car No.ADB 2489 coming in the opposite direction which constitutes misconduct in terms of Reg. 28 of Sub-Clause XXXI of APSRTC Employees (Conduct) Reg. 1963.

3. For your failure to take adequate precautions while overtaking a lorry going ahead of you, with the result the vehicle met with an accident dashing a car which was coming in the opposite direction which constitutes a misconduct in term of Reg. 28 of Sub-Clause XXXI of APSRTC Employees (Conduct) Reg. 1963.

4. For having caused damages to the vehicle AAZ 5749 which was involved in a fatal accident while being driven by you on 01-02-1985 on the route Vijayawada-Kavali which constitutes misconduct in terms of Reg. 28 of Sub-Clause XIII of APSRTC Employees (Conduct) Reg. 1963.

5. For having caused damages to the Car No.ADB 2489 coming in your opposite direction by dashing against it with vehicle AAZ 5749 on the route Vijayawada-Kavali on 01-02-1985 which constitutes misconduct in terms of Reg. 28 of Sub-Clause XIII of APSRTC Employees (Conduct) Reg. 1963.

The petitioner submitted his explanation on 08-02-1985. In the meanwhile, C.C.No.62 of 1986 was filed before the III Additional Munsif Magistrate, Ongole. Petitioner chose not to participate in the departmental enquiry and on his being found guilty in the enquiry, the petitioner was removed from service. The appeal preferred by him to the Divisional Manager was rejected on 30-09-1987 and the revision filed by him to the Regional Manager, was also rejected. In the criminal case, the petitioner was found not guilty of the offences under Sections 337 and 304-A I.P.C., but was convicted under Section 255(3) Cr.P.C. for having been found guilty of an offence under Section 89(b) read with Section 118-A of the Motor Vehicles Act, 1948 and sentenced to pay a fine of Rs.100/-. After his acquittal in the criminal case, the petitioner submitted a representation on 12-05-1988 to the Divisional Manager and as he was not reinstated into duty, he approached the Labour Court by way of the present I.D.

The Labour Court, in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947, reappreciated the evidence adduced in the domestic enquiry. The Labour Court took note of the fact that the acquittal of the petitioner for the offences under Sections 337 and 304-A I.P.C. was subsequent to the orders passed by the respondents and by the date of the judgment, the domestic enquiry was concluded, that no reference to the criminal case was made in the domestic enquiry and that findings were recorded independent of the criminal proceedings. The Labour relied on the judgment of the Madras High Court in **W.S.Insulter of India V. Md.Sega**, where an order of acquittal in a criminal proceedings, passed after an employee's dismissal from service was held not to have any effect on the order of punishment imposed pursuant to the disciplinary enquiry. The Labour Court held that acquittal in a criminal case has no relevance to the domestic enquiry since the petitioner was charged in the domestic enquiry for driving the vehicle at high speed, lack of anticipation and lack of precaution and in the criminal case he was charged for rash and negligent driving. The Labour Court took note of the fact that the nature of proof required in the criminal case and in the domestic enquiry were not of the same degree. Thereafter, the Labour Court, on reappreciating the evidence, held thus:

"The facts which are not in seriously dispute are the petitioner was driving the bus AAZ 5749 of Vijayawada-Kavali on 01-02-1985 and it dashed the Ambassador Car No.ADB 2485 coming in a opposite direction and it resulted in the death of two passengers and injuries to two other and damages to both the vehicles. A preliminary investigation was conducted by Mr.V.S.Ravi Kumar, S.T.I. He prepared the sketch and submitted report on 08-02-1985. The petitioner also submitted report on 05-02-1985. The version of the petitioner in his report was that he noticed the Ambassador Car that had crossed a lorry coming in high speed in the middle of the road without focusing dip and dim lights and he focused dip and dip lights and reduced the speed of the bus and when he was attempting to swerve the bus to the left, the car came and dashed the bus. So according to the version of the petitioner the car was coming in the middle of the road after over taking a lorry. But his statement before the preliminary investigating officer is as follows:

"At about 21 hours the bus left Ongole for Kavali after passing Pellur I noticed one lorry going ahead of my bus had given signals by focusing dim and bright light to the lorry so that I can overtake the lorry. On noticing the signals given by me the driver had given side to my bus then I over took the lorry. The speed of the lorry at that time was about 45 K.M. per hour. After I had over taken lorry, I noticed one vehicle coming all of sudden in front of me at that time my bus was in the centre of the road I had also given signals by focusing dim and bright. After focusing dim and bright I came to Know that the vehicle coming in front of me was an Ambassador Car. I noticed the Ambassador Car at a distance

of 30 feet. The Ambassador Car was driven at high speed and the driver had not given any dim and bright signals. The Ambassador Car over taken a lorry and coming in front of my bus at high speed while I made an attempt to swerve the vehicle to left side, the Ambassador car came suddenly in front of my bus and hit the R.N.S.Cowl portion of the bus. At the same time, my bus along with the Ambassador Car went into the left side crossing the road margin upto a distance of about 40 feet into the nearby canal."

Therefore his version before the Preliminary Investigating Officer was that he was proceeding in the centre of the road after over taking the lorry. It is also his case that he noticed the car when it was at a distance of 30 feet. If such is the case nothing prevented him to make an effort to bring the bus to halt by applying the breaks. The rough sketch prepared by the Preliminary enquiry officer does not indicate any skid mark to suggest that the applicant made an effort not reduce the speed of the bus. The width of the road was 22.6 feet and the width of the road margin of the right side and the left side was 9" and 10" respectively. The rough sketch also indicates that the bus dragged the car to a distance of 130 feet after the impact. During the enquiry the Preliminary Enquiry Officer has been examined as a witness. He detailed the scene of offence and the position of the vehicles soon after the accident. The rough sketch prepared by the Preliminary Investigating Officer clearly indicates that the bus dragged the car to the extreme left side of the road and both the vehicles fell into a canal. There is a crystal clear evidence to show that the petitioner drew the vehicle with lack of anticipation and in a speed which is not warranted at that juncture. The findings of the Enquiry Officer are based on the evidence and any reasonable person would draw the conclusions actually drawn by him."

Having held that the findings of the enquiry officer are based on evidence and that any reasonable person would draw the conclusions drawn by the enquiry officer, the Labour Court took note of the fact that the petitioner was found not guilty of the offences under Sections 334 and 304-A I.P.C., and held that, in the facts and circumstances of the case, withholding of back wages and stoppage of four annual increments with cumulative effect would meet the ends of justice instead of saddling him with the extreme penalty in the nature of economic death by removing him from service.

Sri P.V.R.Sharma, learned counsel for the petitioner, would strenuously contend that the petitioner having been acquitted in the criminal case for the offences under Sections 334 and 304-A I.P.C., the Labour Court is bound by the acquittal in the criminal case and since the charge, both in the departmental enquiry and in the criminal case, are based on the very same incident, the petitioner's acquittal in the criminal case would automatically necessitate that the petitioner be reinstated into service with full back wages and all other attendant benefits.

I am afraid I cannot agree. It is well settled that prior conviction in the departmental enquiry would not be affected by a subsequent acquittal in the criminal case, more so, as the proceedings in a domestic enquiry are distinct from those in a criminal case. While the degree of proof in a criminal case is proof beyond reasonable doubt, in departmental proceedings it is preponderance of probabilities. Even in cases where an application is filed before the Labour Court, after the acquittal in the criminal case, acquittal is but a factor to be taken into consideration by the Labour Court and the judgment of the Criminal Court acquitting the petitioner is not automatically binding on the Labour Court. While modifying the order of punishment, the Labour Court did but take into consideration the petitioner's acquittal in the criminal case and directed that the petitioner be reinstated into service without back wages and imposed the punishment of stoppage of four annual increments with cumulative effect. The order of the Labour Court is just and valid. In any event the scope of interference under Article 226 of the Constitution of India against orders of Labour Courts, modifying the punishment imposed by the employer, is limited and it is only if the punishment modified by the Labour Court is one which shocks the conscience of this Court or is a punishment which could not have been imposed at all, would any interference be called for. It cannot be said that, in the facts and circumstances of the present case, the modified punishment of the Labour Court was harsh and severe as to amount to an illegal exercise of jurisdiction. No interference is called for against the award of the Labour Court.

The writ petition is accordingly dismissed. However in the circumstances without costs.

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16-03-2006

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